

Memorandum 96-64

Ethical Standards for Administrative Law Judges: Draft of Recommendation

Attached to this memorandum is a draft of the recommendation on ethical standards for administrative law judges, revised to incorporate Commission decisions made at the July 1996 meeting. Also attached as Exhibit pp. 1-3 is a letter from the State Personnel Board addressing issues raised at the meeting.

This memorandum presents information on the following matters left outstanding from the July meeting:

- (1) Political activities of judges and administrative law judges.
- (2) Other exceptions from the Code of Judicial Ethics for administrative law judges.
- (3) Initiation of disciplinary action by person outside employing agency.

Our objective is to complete work on this topic and submit a final recommendation to the Legislature for the 1997 session.

Political Activities of ALJs

The Commission requested staff research on the extent to which judicial officers may engage in political activities related to their own salaries, benefits, and working conditions, for purposes of comparison with administrative law judges.

Our investigation indicates that judges are politically active with respect to their own salaries, benefits, and working conditions, both at the state and local levels. Despite the general limitation of the Code of Judicial Ethics on political activities, this type of involvement is construed to either (1) fall within Canon 4C(1), which permits a judge to appear at a public hearing or officially consult with an executive or legislative body or public official "in matters concerning the judge's private economic or personal interests", or (2) be generally permissible as activity relating to the "administration of justice".

In light of this information, the staff suggests the following material for the statute and Comment relating to administrative law judges:

11475.40. The following provisions of the Code of Judicial Ethics do not apply under this article:

...
(e) Canons 5B and 5C. The remaining provisions of Canon 5 apply under this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

...
Comment. Subdivision (e) excepts Canons 5B and 5C, relating to candidacy for judicial office. It reflects the fact that the position of administrative law judge is not an elective office.

The remainder of Canon 5 limits the political activities of administrative law judges even though other public employees might be able to participate in those activities under the *Hatch Act* (Sections 3201-3209). This subdivision is not intended to preclude an administrative law judge or other presiding officer to which this article applies from appearing at a public hearing or officially consulting with an executive or legislative body or public official in matters concerning the judge's private economic or personal interests, or to otherwise engage in political activities relating to the salary, benefits, and working conditions for the improvement of the administration of justice. See Canons 4C(1) and 5D.

Exceptions from Code of Judicial Ethics

At the July meeting the Commission asked the staff to bring back for further consideration the exceptions to the Code of Judicial Ethics we have previously identified for administrative law judges. The political activities issue is addressed above. The other exceptions are:

Canon 3B(7), to the extent it relates to ex parte communications. The basis for this exception is that Canon 3B(7) precludes ex parte communications in terms somewhat different than the ex parte communications statutes applicable in administrative adjudication. The Code of Judicial Ethics should not be used to make a substantive change in law of this nature, and therefore administrative law judges are excepted from Canon 3B(7) to the extent it relates to ex parte communications. The staff recommends that this exception be preserved.

Canon 3B(10). This provision relates to juries, which are not used in administrative adjudication. The staff recommends that this exception be preserved.

Canon 4C. The Code of Judicial Ethics limits the right of a judge to engage in governmental, civic, and charitable activities:

(1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official

except on matters concerning the law, the legal system, the administration of justice, or in matters involving the judge's private economic or personal interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions or in connection with historical, educational, or cultural activities.

(3) Subject to the following limitations and the other requirements of this Code,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, article VI, section 17.

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit.

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, retired judges, and temporary judges);

(ii) may make recommendations to public and private fund granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).

We excepted administrative law judges from these limitations for a number of reasons, including: (1) Many of them serve on municipal or other local boards and commissions, and otherwise participate in civic activities, which should be encouraged; activities of this sort do not ordinarily conflict with the duties of a hearing officer. (2) Precluding administrative law judges from consulting with executive bodies and officials would impair their ability to function within their own agencies. (3) The constitutional limitations on judges holding public office are based on separation of powers concepts which are inapplicable to executive branch employees. (4) The general canons of ethical conduct and avoidance of conflict of interest are sufficient limitations on activities of administrative law judges without the need for the types of detailed prohibition found in Canon 4C. See, e.g., Canon 4A (extrajudicial activities in general):

A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

The staff recommends no change in this approach.

Canons 4E(1), 4F, and 4G. These Canons prohibit a judge from participating in outside activity as a fiduciary, arbitrator or mediator, or lawyer. We have not applied these prohibitions to administrative law judges because (1) unlike judges, administrative law judges see a very narrow range of issues, making broad prohibition of outside activities inappropriate, and (2) by statute the incompatible activities statement of each agency governs outside activities of employees of that agency, tailored to the circumstances of the agency and its employees. The staff recommends that this exception be maintained.

Canon 6. Canon 6 contains special rules for implementation of the Code of Ethics to judges. We except Canon 6 because we have provided our own special implementation rules for administrative law judges in proposed Section 11475.60

(compliance). It should be noted, however, that Canon 6 also envisions limited application of the Code of Ethics to retired judges sitting on assignment, temporary judges, referees, and court-appointed arbitrators. If the Commission decides to make Canon 4C, 4E(1), 4D, or 4F applicable to administrative law judges, then we will need to make an exception for part-time administrative law judges.

Enforcement of Violations

At the July meeting the issue arose whether a person adversely affected by an administrative law judge's breach of ethical standards could bring disciplinary proceedings if the employing agency fails to do so.

The Civil Service Act contemplates this possibility. Government Code Section 19583.5 provides that any person, with the consent of the State Personnel Board, may file charges against an employee requesting disciplinary action. Such a request must be filed within one year after the event that led to the filing. A hearing is conducted and "if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper." Gov't Code § 19583.5.

This provision is implemented by a State Personnel Board regulation. See 2 Cal. Code Regs. § 51.9:

§ 51.9. Request to File Charges Against State Employees.

A request of the board for consent to file charges under Government Code section 19583.5 shall be in writing and shall be accompanied by the proposed charges. The statement of proposed charges shall be a sworn statement. The statement shall clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

Where it does not appear that the material facts alleged are within the personal knowledge of the complainant, the board may require the complainant to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request.

Once the board has approved a request to file charges, any alleged failure to follow the procedure described above shall not invalidate subsequent proceedings.

The State Personnel Board indicates that a direct request to it for disciplinary action against an employee is relatively infrequent, but does occur. See Exhibit p. 2.

The staff would add a reference to this procedure in the Comment to Section 11475.50 (enforcement):

Under Section 19572, a violation of an applicable provision of the Code of Judicial Ethics is grounds for disciplinary action by the employing agency against an administrative law judge. Appropriate discipline is the responsibility of the agency that employs the administrative law judge. Thus if an administrative law judge employed by the Office of Administrative Hearings violates the code of ethics in a hearing conducted for another agency, the Office of Administrative Hearings is the disciplining entity, and not the other agency. An agency may apply appropriate disciplinary procedures. See, e.g., 8 Cal. Code Regs. §§ 9720.1-9723 (enforcement of ethical standards of workers' compensation referees). It should be noted that a person may also institute disciplinary proceedings directly before the State Personnel Board with the consent of the board. Gov't Code § 19583.5; 2 Cal. Code Regs. § 51.9.

In this connection, it should be noted that the State Personnel Board believes a reasonable case could be made that a violation of the Code of Ethics would be cause for disciplinary action under Government Code Section 19572. See Exhibit pp. 1-2. Our current draft would remove any doubt that might exist by including a specific statute to that effect. See draft Section 11475.50(b).

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, California 95814

August 13, 1996

Law Revision Commission
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AUG 14 1996

File: _____

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Ethical Standards for Administrative Law Judges

Dear Mr. Sterling:

At the July 11, 1996 meeting of the California Law Revision Commission, the Commission requested the State Personnel Board (SPB) to provide it with information on how and whether the State Personnel Board would discipline administrative law judges (ALJs) accused of violating the ethical standards being considered for proposal by the Commission.

All state employees, including ALJs, are subject to discipline for cause pursuant to Government Code §§ 19570 et seq. Government Code section 19572 lists 23 separate causes for discipline. To sustain an adverse employment action against a state employee, the employing department ("appointing power") must prove by a preponderance of the evidence that the employee engaged in one of the types of misconduct specified in section 19572. As you can see, these enumerated causes are quite broad, and include the following:

- inexcusable neglect of duty [subdivision (d)]
- insubordination [subdivision (e)]
- dishonesty [subdivision (f)]
- improper political activity [subdivision (n)]
- willful disobedience [subdivision (o)]
- violation of the prohibitions set forth in accordance with section 19990 (involving incompatible activities) [subdivision (r)]
- other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment [subdivision (t)]

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The SPB has taken the position that a state civil service employee may only be disciplined for one or more of the causes listed above, and cannot be disciplined for reasons that do not fall into one of these categories. The Board's experience, however, is that virtually any legitimate basis for disciplining a state employee would fall within these categories. While each case would obviously turn on its particular facts as evaluated by the Board, a good argument could be made that, an ALJ who violates one of the ethical standards set forth elsewhere in statute could be disciplined for inexcusable neglect of duty, based upon the ALJ's intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty. Gubser v. Department of Employment (1969) 271 Cal.App.2d 240, 242. Moreover, where an appointing power specifically directs its ALJs to follow the ethical standards, failure to do so could also constitute insubordination or willful disobedience of a direct order. Coomes v. State Personnel Board (1963) 215 Cal.App.2d 1968. Finally, conduct which may not fall within one of the other enumerated sections but which constitutes a failure of good behavior of a nature causing discredit to the appointing authority or the person's employment would nonetheless violate subdivision (t). Therefore, while the Board's jurisdiction to review disciplinary actions is limited to the causes set forth in section 19572, it is likely that the violation of statutory ethical standards by an ALJ would fall within one or more of the enumerated causes for discipline of state civil service employees.

The Commission also expressed an interest in whether the SPB could take disciplinary action against an ALJ in the event the ALJ's appointing power fails to do so. Pursuant to Government Code section 19583.5, any person, except for a current ward or inmate of the California Youth Authority or the Department of Corrections, may file a "Request to File Charges" with the SPB requesting that adverse action be taken against a state employee for one or more of the causes for discipline specified in section 19572. If the request is granted by the Board, the requesting party will be entitled to present evidence, in a hearing before the SPB, in support of the charges against the individual. If the SPB determines that the charges are true, the SPB may take adverse action against the individual. While utilized infrequently, this procedure affords interested parties an alternative opportunity to seek the imposition of discipline against a state employee in circumstances where the employee's own employer fails to take disciplinary action.

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The SPB is very interested in the Commission's activities and would be happy to respond to any further requests for information by the Commission. If you have questions regarding the above, please feel free to contact me at (916) 653-1403.

Sincerely,



ELISE S. ROSE
Chief Counsel

cc: Lorrie Ward, President
State Personnel Board
C. Lance Barnett, Ph.D., Executive Officer
State Personnel Board

#N-111

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

RECOMMENDATION

Ethical Standards for Administrative Law Judges

September 1996

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
(415) 494-1335 FAX: (415) 494-1827

ETHICAL STANDARDS FOR
ADMINISTRATIVE LAW JUDGES

Summary of Recommendation

This recommendation proposes to adapt the California Code of Judicial Ethics (1996) to govern the hearing and nonhearing conduct of state administrative law judges. The ethical standards would apply in all proceedings conducted by state administrative law judges, including state adjudicative proceedings that are otherwise exempt from the Administrative Procedure Act. State hearing officers other than administrative law judges would not generally be covered by the new ethical standards, but general statutes governing conduct of state employees would continue to apply to them. A violation of the new ethical standards would be grounds for disciplinary action against the administrative law judge.

ETHICAL STANDARDS FOR ADMINISTRATIVE LAW JUDGES

1 California has led the nation in developing a corps of professional administrative
2 law judges to conduct state administrative adjudication proceedings. California's
3 landmark 1945 Administrative Procedure Act included a central panel of hearing
4 officers, designed to provide competent, professional hearing services for a variety
5 of state agencies.¹ In addition, major state agencies that conduct their own
6 administrative hearings have developed in-house divisions of administrative law
7 judges devoted to the adjudication function.²

8 It is important for the integrity of the state's administrative adjudication system
9 that its administrative law judges adhere to high ethical standards of conduct.
10 Administrative law judges, like all other state employees, are currently subject to
11 disciplinary action on such grounds as:³

- 12 • Incompetency
- 13 • Inexcusable neglect of duty
- 14 • Dishonesty
- 15 • Discourteous treatment of the public or other employees
- 16 • Engaging in an employment, activity, or enterprise that is inconsistent,
17 incompatible, or in conflict with the duties of the employee
- 18 • Unlawful discrimination
- 19 • Other failure of good behavior

20 However, these grounds for disciplinary action are not well-adapted to the
21 circumstances of adjudicative proceedings and administrative law judges.

22 At least one body of California hearing officers is expressly subject to an
23 adjudicative code of ethics. Workers' Compensation Referees must subscribe to
24 the California Code of Judicial Conduct and may not otherwise, directly or
25 indirectly, engage in conduct contrary to that code.⁴ The canons of the California
26 Code of Judicial Conduct admonish a judge to uphold the integrity and
27 independence of the judiciary, to avoid impropriety and the appearance of
28 impropriety in all of the judge's activities, to perform the duties of judicial office
29 impartially and diligently, to conduct the judge's quasi-judicial and other extra-

1. For a description of the California central panel system and its history, see *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 25, 93-98 (1995).

2. The Law Revision Commission estimates that at least 95% of the state's administrative law judges and hearing officers are employed by the adjudicating agencies rather than the Office of Administrative Hearings. Each of the following major adjudicative agencies employs a greater number of administrative law judges or hearing officers than the total number employed by the Office of Administrative Hearings: Board of Prison Terms, Department of Industrial Relations, Department of Social Services, Public Utilities Commission, Unemployment Insurance Appeals Board, Workers' Compensation Appeals Board.

3. Gov't Code § 19572.

4. Lab. Code § 123.6.

1 judicial actives to minimize the risk of conflict with judicial obligations, and to
2 refrain from inappropriate activity.⁵

3 Some of the provisions of the Code of Judicial Conduct are not suited to the
4 circumstances of administrative adjudication. Efforts have been made at the
5 national level to adapt judicial codes to govern the conduct of administrative law
6 judges and provide guidance to them in establishing and maintaining high
7 standards of judicial and personal conduct. These include the American Bar
8 Association's Model Codes of Judicial Conduct for Federal Administrative Law
9 Judges and State Administrative Law Judges, the National Association of
10 Administrative Law Judges' Model Code of Judicial Conduct for State
11 Administrative Law Judges, and the Model Code of Judicial Conduct for State
12 Central Panel Administrative Law Judges.

13 To help maintain the competence and integrity of California's system of
14 administrative adjudication, the Law Revision Commission recommends that
15 California adopt ethical standards for administrative law judges. Although national
16 model codes are available, the Commission recommends that the California
17 standards be based on the new California Code of Judicial Ethics, promulgated by
18 the California Supreme Court effective January 15, 1996.⁶

19 The California Code of Judicial Ethics is sanctioned by Article VI, § 18 of the
20 California Constitution. It replaces the California Code of Judicial Conduct, and
21 has the force of law. By adapting the judicial code to the circumstances of
22 administrative adjudication, we can ensure that the same ethical standards will
23 apply throughout state adjudication, both judicial and administrative. Moreover,
24 uniform judicial and administrative ethical standards will enable each system to
25 benefit from the other's experience under it.

26 The California Code of Judicial Ethics should generally apply to state
27 administrative law judges. However, the following provisions of the Code, which
28 may be appropriate for judges, are inappropriate as applied to administrative law
29 judges:

- 30 • Canon 3B(7) provides rules for ex parte communications; the Administrative
31 Procedure Act already covers the matter in some detail.⁷
- 32 • Canon 3B(10) relates to juries, which are not used in administrative
33 adjudication.
- 34 • Canon 4C limits the right to engage in governmental, civic, and charitable
35 activities, however, administrative law judges are executive branch rather than
36 judicial branch employees, and the range of issues that may come before them is
37 narrowly circumscribed.
- 38 • Canons 4E, 4F, and 4G prohibit service as a fiduciary or private employment
39 in alternative dispute resolution or the practice of law; these matters are the
40 subject of each employing agency's incompatible activity rules adopted pursuant
41 to Government Code Section 19990.

5. California Judges Association, California Code of Judicial Conduct, Canons 1-5 (1992).

6. A copy of the California Code of Judicial Ethics is attached to this recommendation as an Appendix.

7. Gov't Code §§ 11430.10-11430.70 (operative July 1, 1997), 11513.5 (operative until July 1, 1997).

- 1 • Canon 5 contains provisions concerning political activities for the elective
2 office of a judge; these are not relevant to administrative law judges.
- 3 • Canon 6 — enforcement of and compliance with the code of ethics — requires
4 adaptation to executive branch as opposed to judicial branch implementation and
5 enforcement.

6 Violation of the ethical standards should be grounds for disciplinary action
7 against an offending administrative law judge. This is consistent with existing law,
8 which provides that “failure of good behavior either during or outside of duty
9 hours which is of such a nature that it causes discredit to the appointing authority
10 or the person’s employment” is grounds for discipline of a state employee.⁸ The
11 Administrative Adjudication Code of Ethics in effect defines “failure of good
12 behavior” for administrative law judges.

13 The Law Revision Commission would not apply the ethical standards to a
14 presiding officer other than an administrative law judge, at present. Application of
15 the standards to other hearing personnel is problematic, since the presiding officer
16 may be part-time or a lay hearing officer, or even the agency head.⁹ But general
17 principles of appropriate conduct would still apply to non-administrative law judge
18 hearing personnel.¹⁰ And an agency could by regulation make the Administrative
19 Adjudication Code of Ethics applicable to its presiding officers.¹¹

20 The administrative adjudication provisions of the Administrative Procedure Act
21 do not govern certain state agency hearings.¹² Nonetheless, the proposed
22 Administrative Adjudication Code of Ethics should apply to administrative law
23 judges who preside in these hearings. The ethical integrity of a state administrative
24 law judge is independent of the details of the particular hearing procedure the
25 judge follows.

8. Gov’t Code § 19572(t).

9. Cf. Gov’t Code § 11405.80 (“presiding officer” defined), operative July 1, 1997.

10. See discussion at note 3, *supra*.

11. See Section 11410.40 (election to apply administrative adjudication provisions).

12. See, e.g., Gov’t Code § 15609.5 (State Board of Equalization), operative July 1, 1997; Pub. Util. Code § 1701 (Public Utilities Commission), operative July 1, 1997.

PROPOSED LEGISLATION

1 An act to add Article 16 (commencing with Section 11475.10) to Chapter 4.5 of
2 Division 3 of Title 2 of the Government Code, and to amend Section 123.6 of the
3 Labor Code, relating to ethical standards of presiding officers in administrative
4 adjudication.

5 **Gov't Code §§ 11475.10-11475.60 (added). Administrative Adjudication Code of Ethics**

6 SECTION 1. Article 16 (commencing with Section 11475.10) is added to
7 Chapter 4.5 of Division 3 of Title 2 of the Government Code, to read:

8 Article 16. Administrative Adjudication Code of Ethics

9 **§ 11475.10. Application of article**

10 11475.10. (a) This article applies to all of the following persons:

11 (1) An administrative law judge. As used in this subdivision, “administrative law
12 judge” means an incumbent of that position as defined by the State Personnel
13 Board for each class specification for Administrative Law Judge.

14 (2) A presiding officer to which this article is made applicable by statute or
15 regulation.

16 (b) This article applies notwithstanding a general provision that this chapter does
17 not apply to some or all of a state agency’s adjudicative proceedings.

18 **Comment.** Section 11475.10 limits application of the Administrative Adjudication Code of
19 Ethics to specified classes of hearing officers. See Section 11475.20 (application of Code of
20 Judicial Ethics).

21 Subdivision (a)(1) includes not only an administrative law judge who presides at a hearing but
22 also a supervisory or management level administrative law judge or chief administrative law
23 judge, whose function may relate directly or indirectly to the adjudicative process.

24 This article does not apply to an agency head or hearing officer who presides in an
25 administrative adjudication but who is not an administrative law judge, absent a special statute or
26 regulation. See subdivision (a)(2). However, other ethical considerations apply to the hearing and
27 nonhearing conduct of state agency presiding officers. See, e.g., Section 19572 (cause for
28 discipline).

29 The Administrative Adjudication Code of Ethics is made applicable by statute to workers’
30 compensation referees. Lab. Code § 123.6. An agency may make the Administrative Adjudication
31 Code of Ethics applicable to its non-administrative law judge presiding officers by regulation
32 where this article would not otherwise apply. See Section 11410.40 (election to apply
33 administrative adjudication provisions); see also Section 11405.80 (“presiding officer” defined).

34 Under subdivision (b), the Administrative Adjudication Code of Ethics applies to an
35 administrative law judge even though the proceedings in which the administrative law judge
36 presides might otherwise be statutorily exempt from this chapter. See, e.g., Section 15609.5 (State
37 Board of Equalization); Pub. Util. Code § 1701 (Public Utilities Commission).

38 **§ 11475.20. Application of Code of Judicial Ethics**

39 11475.20. Except as otherwise provided in this article, the Code of Judicial
40 Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of
41 Article VI of the Constitution for the conduct of judges governs the hearing and

1 nonhearing conduct of an administrative law judge or other presiding officer to
2 which this article applies.

3 **Comment.** Section 11475.20 applies the Code of Judicial Ethics in administrative adjudication.
4 For the persons to which this article applies, see Section 11475.10 (application of article).

5 The Code of Judicial Ethics adopted by the Supreme Code is effective January 15, 1996. The
6 incorporation by reference includes subsequent amendments and additions to the Code. Section 9.

7 It is intended that interpretations of the Code of Judicial Ethics in its application to the judicial
8 system, whether made by court rule or decision, should also be applied in administrative
9 adjudication, to the extent relevant to the circumstances of administrative adjudication. Cf.
10 Section 11475.40 (provisions of Code excepted from application).

11 The Code of Judicial Ethics supplements other standards applicable to conduct of an
12 administrative law judge, including disqualification for bias (Section 11425.40) and disciplinary
13 action for failure of good behavior (Section 19572). See also Section 11475.50 & Comment
14 (enforcement).

15 § 11475.30. Terminology

16 11475.30. For the purpose of this article, the following terms used in the Code of
17 Judicial Ethics have the meanings provided in this section:

18 (a) “Appeal” means administrative review.

19 (b) “Court” means the agency conducting an adjudicative proceeding.

20 (c) “Judge” means administrative law judge or other presiding officer to which
21 this article applies; related terms, including “judicial”, “judiciary”, and “justice”,
22 mean comparable concepts in administrative adjudication.

23 (d) “Law” includes regulation and precedent decision.

24 **Comment.** Section 11475.30 provides a general guide to conversion of terminology in the
25 Code of Judicial Ethics for application to administrative adjudication. It is intended to be applied
26 in a manner to effectuate that general purpose without requiring strict or grammatically precise
27 rigidity in the conversion. Likewise, terms not specified in this section should be converted in an
28 appropriate manner to effectuate the general intent of this statute to apply the Code of Judicial
29 Ethics to the circumstances of administrative adjudication.

30 § 11475.40. Provisions of Code excepted from application

31 11475.40. The following provisions of the Code of Judicial Ethics do not apply
32 under this article:

33 (a) Canon 3B(7), to the extent it relates to ex parte communications.

34 (b) Canon 3B(10).

35 (c) Canon 4C.

36 (d) Canons 4E(1), 4F, and 4G.

37 (e) Canon 5.

38 (f) Canon 6.

39 **Comment.** Section 121475.40 adapts the Code of Judicial Ethics for application to
40 administrative law judges. Some provisions of the Code of Judicial Ethics, although not excepted
41 by this section, may be minimally relevant to an administrative law judge. See, e.g., Canon 3C(4)
42 (administrative responsibilities).

43 Subdivision (a) of Section 11475.40 excepts the portion of Canon 3B(7) relating to ex parte
44 communications. It reflects the fact that special provisions, and not the Code of Judicial Ethics,
45 govern ex parte communications in administrative adjudication. See, e.g., Article 7 (commencing
46 with Section 11430.10).

1 Subdivision (b) excepts Canon 3B(10), relating to juries. It reflects the fact that juries are not
2 used in administrative adjudication.

3 Subdivision (c) excepts Canon 4C, relating to governmental, civic, or charitable activities. An
4 administrative law judge is not precluded from engaging in activities of this type, except to the
5 extent the activities may conflict with general limitations on the administrative law judge's
6 conduct. See, e.g., Canon 4A (extrajudicial activities in general).

7 Subdivision (d) excepts Canons 4E(1), 4F, and 4G, relating to fiduciary activities, private
8 employment in alternative dispute resolution, and the practice of law. These matters are the
9 subject of the employing agency's incompatible activity statement pursuant to Section 19990.

10 Subdivision (e) excepts Canon 5, relating to political activities. It reflects the fact that an
11 administrative law judge is not an elective office.

12 Subdivision (f) excepts Canon 6, which is superseded by Sections 11475.50 (enforcement) and
13 11475.60 (compliance).

14 **§ 11475.50. Enforcement**

15 11475.50. (a) An administrative law judge or other presiding officer to which
16 this article applies shall comply with the applicable provisions of the Code of
17 Judicial Ethics.

18 (b) A violation of an applicable provision of the Code of Judicial Ethics by an
19 administrative law judge or other presiding officer to which this article applies is
20 cause for discipline by the employing agency pursuant to Section 19572.

21 **Comment.** Section 11475.50 supersedes Canon 6A of the Code of Judicial Ethics. The
22 compliance requirement is not precatory in administrative adjudication, but is mandatory.

23 Under Section 19572, a violation of an applicable provision of the Code of Judicial Ethics is
24 grounds for disciplinary action by the employing agency against an administrative law judge.
25 Appropriate discipline is the responsibility of the agency that employs the administrative law
26 judge. Thus if an administrative law judge employed by the Office of Administrative Hearings
27 violates the code of ethics in a hearing conducted for another agency, the Office of
28 Administrative Hearings is the disciplining entity, and not the other agency. An agency may
29 apply appropriate disciplinary procedures. See, e.g., 8 Cal. Code Regs. §§ 9720.1-9723
30 (enforcement of ethical standards of workers' compensation referees).

31 A violation of the code of ethics by the administrative law judge is not per se grounds for
32 disqualification, or reversal of a decision, of the administrative law judge. But the violation may
33 be indicative of the administrative law judge's violation of other procedural requirements. See,
34 e.g., Section 11425.40 (disqualification of presiding officer for bias, prejudice, or interest).

35 **§ 11475.60. Compliance**

36 11475.60. (a) Except as provided in subdivision (b), a person to whom this
37 article becomes applicable shall comply immediately with all applicable
38 provisions of the Code of Judicial Ethics.

39 (b) A person to whom this article becomes applicable shall comply with Canon
40 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so
41 in any event within a period of one year after the article becomes applicable.

42 **Comment.** Section 11475.60 supersedes Canon 6F of the Code of Judicial Ethics.

43 **Lab. Code § 123.6 (amended). Workers' compensation referees**

44 SEC. 2. Section 123.6 of the Labor Code is amended to read:

1 123.6. (a) All workers' compensation referees ~~and settlement conference~~
2 referees employed by the administrative director shall subscribe to the California
3 Code of Judicial Conduct adopted by the Conference of California Judges
4 Administrative Adjudication Code of Ethics, Article 16 (commencing with Section
5 11475.10) of Chapter 4.5 of Division 3 of Title 2 of the Government Code, and
6 shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

7 The administrative director shall adopt regulations to enforce this section. To the
8 extent possible, the rules shall be consistent with the procedures established by the
9 Commission on Judicial Performance for regulating the activities of state judges,
10 and, to the extent possible, with the gift, honoraria, and travel restrictions on
11 legislators contained in the Political Reform Act of 1974.

12 (b) Honoraria or travel allowed by the administrative director or otherwise not
13 prohibited by this section in connection with any public or private conference,
14 convention, meeting, social event, or like gathering, the cost of which is
15 significantly paid for by attorneys who practice before the board, may not be
16 accepted unless the administrative director has provided prior approval in writing
17 to the workers' compensation referee allowing him or her to accept those
18 payments.

19 **Comment.** Section 123.6 is amended to reflect the fact that the California Code of Judicial
20 Conduct adopted by the Conference of California Judges is superseded by the Code of Judicial
21 Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of
22 the Constitution. The Code of Judicial Ethics is adapted for administrative law judges by
23 Government Code Sections 11475.10-11475.60 (administrative adjudication code of ethics).

24 The reference in subdivision (a) to settlement conference referees is deleted as obsolete;
25 statutory authority for this classification no longer exists.

APPENDIX

CALIFORNIA CODE OF JUDICIAL ETHICS

Adopted by the Supreme Court of California
effective January 15, 1996

TERMINOLOGY

“Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

“Candidate.” A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence.

“Court personnel” does not include the lawyers in a proceeding before a judge.

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian.

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law.

“Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

“Member of the judge’s family residing in the judge’s household” denotes a spouse and those persons who reside in the judge’s household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship.

“Nonprofit youth organization” is any nonprofit corporation or association not organized for the private gain of any person, and one whose purposes are irrevocably dedicated to benefiting and serving the interests of minors, and which maintains its nonprofit status in accordance with applicable state and federal tax laws.

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports.

“Political organization” denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office.

“Temporary Judge.” A temporary judge is an active or inactive member of the bar who serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard.

“Require.” Any Canon prescribing that a judge “require” certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

CANON 1

A Judge Shall Uphold The Integrity And Independence Of The Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally, is not itself a violation of this Code.

CANON 2

A Judge Shall Avoid Impropriety And The Appearance Of Impropriety In All Of The Judge’s Activities

A. Promoting Public Confidence. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others; nor shall a judge testify voluntarily as a character witness. A judge shall not initiate communications with a sentencing judge or a probation or corrections officer, but may provide them with information for the record in response to an official request. A judge may initiate communications with a probation or corrections officer concerning a member of the judge’s family, provided the judge is not identified as a judge in the communication.

(3) A judge may respond to judicial selection inquiries, provide recommendations, including a general character reference, relating to the evaluation of persons being considered for a judgeship, and otherwise participate in the process of judicial selection.

(4) A judge shall not use the judicial title in any written communication intended to advance the personal or pecuniary interest of the judge. A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge of the individual. These written communications may include the judge's title and be written on stationery that uses the judicial title.

C. Membership in Organizations. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.

This Canon does not apply to membership in a religious organization or an official military organization of the United States. So long as membership does not violate Canon 4A, this Canon does not bar membership in a nonprofit youth organization.

CANON 3

A Judge Shall Perform The Duties Of Judicial Office Impartially And Diligently

A. Judicial Duties in General. All of the judicial duties prescribed by law shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

(2) A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all court staff and personnel under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law. A judge shall not

initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(e) A judge may initiate or consider any ex parte communication when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently.

(9) A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff and court personnel under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.

(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action.

E. Disqualification. A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law. In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

CANON 4

A Judge Shall So Conduct The Judge's Quasi-Judicial And Extrajudicial Activities As To Minimize The Risk Of Conflict With Judicial Obligations

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

B. Quasi-judicial and Avocational Activities. A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this Code.

C. Governmental, Civic, or Charitable Activities

(1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the

law, the legal system, the administration of justice, or in matters involving the judge's private economic or personal interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions or in connection with historical, educational, or cultural activities.

(3) Subject to the following limitations and the other requirements of this Code,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, article VI, section 17.

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit.

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, retired judges, and temporary judges);

(ii) may make recommendations to public and private fund granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).

D. Financial Activities

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift, bequest, favor, or loan if the donor or lender is a party whose interests have come or are reasonably likely to come before the judge. The judge shall discourage members of the judge's family residing in the judge's household from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program, bar-related function or activity, devoted to the improvement of the law, the legal system, or the administration of justice;

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other member of the judge's family residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

- (d) ordinary social hospitality;
- (e) a gift for a special occasion from a relative or friend. if the gift is fairly commensurate with the occasion and the relationship;
- (f) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;
- (g) a loan in the regular course of business on the same terms generally available to persons who are not judges;
- (h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

G. Practice of Law. A judge shall not practice law.

H. Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses as provided by law for the extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

CANON 5

**A Judge Or Judicial Candidate Shall Refrain
From Inappropriate Political Activity**

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall,

however, avoid political activity which may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates for judicial office.

A. Political Organizations. Judges and candidates for judicial office shall not:

- (1) Act as leaders or hold any office in a political organization;
- (2) Make speeches for a political organization or candidate for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office;
- (3) Personally solicit funds for a political organization or nonjudicial candidate; make contributions to a political party or political organization or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization or candidate, or in excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations or nonjudicial candidates.

B. Conduct During Judicial Campaigns. A candidate for election or appointment to judicial office shall not (1) make statements to the electorate or the appointing authority that commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts, or (2) knowingly misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent.

C. Speaking at Political Gatherings. Candidates for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.

D. Measures to Improve the Law. Except as otherwise permitted in this Code, judges shall not engage in any political activity, other than in relation to measures concerning the improvement of the law, the legal system, or the administration of justice.

CANON 6

Compliance With The Code Of Judicial Ethics

A. Judges. Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a magistrate, court commissioner, referee, court-appointed arbitrator, judge of the State Bar Court, temporary judge, or special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. Retired Judge Serving in the Assigned Judges Program. A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service and has received an acknowledgment of participation in the assigned judge program, shall comply with all provisions of this Code, except for the following:

- 4C(2)—Appointment to governmental positions
- 4D(2)—Participation in business entities and managing investments
- 4E—Fiduciary activities

C. Retired Judge as Arbitrator or Mediator. A retired judge serving in the Assigned Judges Program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judges Serving on Assignment* promulgated by the Chief Justice.

D. Temporary Judge, Referee, or Court-appointed Arbitrator. A temporary judge, a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator while actually serving in any of these capacities shall comply with the following provisions of this Code:

1—Integrity and independence of the judiciary

2A, B, C—Public confidence, impartiality of the judiciary, and membership in organizations

3A, B—Judicial duties in general

Adjudicative responsibilities

3C(1), (2), (4)—Administrative responsibilities

3D, E—Disciplinary responsibilities

Disqualification

4A, B—Extrajudicial activities in general

4C(3)(c)(i)—Service as an officer, director, trustee, or non-legal advisor

4C(1)—Appearance at public hearings

4C(3)(d)(iii), (iv)—Use of judicial office for fundraising by officer, director, trustee, or non-legal advisor

4D(1)(a)—Financial and business dealings that exploit the judicial position

4D(5)—Gifts from those who have come or are reasonably likely to come before the judge

5B, C—Statements by candidates for judicial office

Speeches at political gatherings by candidates for judicial office

A person who has been a temporary judge, referee, or court appointed arbitrator shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto except as otherwise permitted by rule 3-310 of the Rules of Professional Conduct.

E. Judicial Candidate. A candidate for judicial office should comply with the provisions of Canon 5.

F. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Canons 4D(2) and 4F and shall comply with these Canons as soon as reasonably possible and shall do so in any event within a period of one year.